

Attorney Docket No. 49950-59776
U.S.S.N. 09/885,297
Applicants: Ingram *et al.*

Examiner: Rao, Manjunath N.
Group Art Unit: 1652

Amendments to the Drawings:

Please delete Figures 5 and 14 and replace them with substitute Figures 5 and 14 submitted herewith.

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REMARKS

Claims 44-49, 51-53, 55-59, 97-99, 101, 102 and 104 are pending in the instant application. Claims 44-49, 51-53 and 55-59 are allowed, and claims 97-99, 101, 102 and 104 are rejected.

Pages 12 and 50 of the specification have been amended. Claims 97-99, 101, 102 and 104 have been cancelled without prejudice or disclaimer. Accordingly, claims 44-49, 51-53 and 55-59 will be pending upon entry of the instant amendment.

Cancellation of the claims is not to be construed as acquiescence to any of the rejections set forth in this Office Action or any previous Office Action, and was done solely to expedite prosecution of the application. Applicants reserve the right to pursue the originally filed claims as well as claims directed to non-elected subject matter in further patent applications.

Sequence Compliance

The Office Action indicates that Applicants are required to comply with the sequence rules by inserting the sequence identification numbers of all sequences recited within the claims and/or specification. In particular, the Office Action indicates that the sequence identifiers for the sequences shown in Figure 14 are missing.

In accordance with the Examiner's helpful suggestion, Applicants have reviewed the specification and drawings to insure compliance with the sequence listing rules. In reviewing the Figures, Applicants discovered that the sequence shown in Figure 5 is not indicated in Figure 5 with a sequence identification number. Applicants further discovered that the sequences shown in Figure 14 as well as certain sequences, mentioned in a passage in the specification making reference to Figure 8, were not reflected in the Sequence Listing as originally filed with the application.

Therefore, pages 12 and 50 of the specification have been amended to insert missing sequence identification numbers. In addition, Applicants submit herewith substitute Figures 5

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and 14 that have been amended to include the sequence identification numbers for the sequences shown therein. Figure 14 has also been amended to delete the text appearing below the sequences. This text has been added to the description of Figure 14 in the specification. Further, Applicants submit herewith a computer readable form (CRF) of a substitute Sequence Listing and a paper copy of the substitute Sequence Listing, and have amended the specification to delete the old Sequence Listing and add the substitute Sequence Listing.

In view of the foregoing, Applicants submit that the instant application fully complies with the rules governing amino acid and nucleotide sequences.

Allowable Subject Matter

Applicants note with appreciation the indication on page 5 of the Office Action that claims 44-49, 51-53 and 55-59 are allowable. The Examiner makes note of the passage from the specification that Applicants indicated supports and defines the phrase "derived from *Erwinia*". In light of this passage, The Examiner has construed the phrase to mean "isolated from *Erwinia* only and not from any other source".

Applicants wish to clarify the meaning of this phrase in light of the specification. As Applicants pointed out in the previous response, the specification at page 18, lines 24-28, defines "derived from" as follows:

The term "derived from" is intended to include the isolation (in whole or in part) of a polynucleotide segment from an indicated source *or* the purification of a polypeptide from an indicated source. ***The term [derived from] is intended to include, for example, direct cloning, PCR amplification, or artificial synthesis from, or based on, a sequence associated with the indicated polynucleotide source. (Emphasis added.)***

Thus, the phrase "derived from *Erwinia*" not only means isolation, in whole or in part, of a polynucleotide segment from *Erwinia*, but also: purification of a polypeptide from *Erwinia*; direct cloning of a sequence associated with a polynucleotide from *Erwinia*; PCR amplification

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of a sequence associated with a polynucleotide from *Erwinia*; or artificially synthesis from or based on a sequence associated with a polynucleotide from *Erwinia*.

Applicants submit that the foregoing meanings are broader than merely "isolated form *Erwinia*" and include recombinants, variants or mutants of *celZ* and *celY* of *Erwinia*. Applicants respectfully request that the Examiner acknowledge that the foregoing broader meanings are encompassed by the allowed claims.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request that claims 44-49, 51-53, and 55-59 proceed to grant. If a telephone conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned attorney at (617) 517-5509.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Peter C. Lauro", is written over a horizontal line.

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